BAIL SLIP

The Accused/Petitioner was released on bail as per High Court Order dated 6.3.2004 and made in Crl.MP.No.2657/2004 in Crl.R.C.No.412/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.412 of 2004

K.Viswanathan .. Petitioner/Accused

vs.

The State rep by
The Inspector of Police,
Traffic Investigation Branch (central)
Coimbatore. .. Respondent/Complainant

Prayer:- This revision petition has been preferred against the judgment dated 26.2.2004 in C.A.No.368 of 2003 passed by the learned Additional District and Sessions Judge, FTC-I, Coimabtore, modifying the judgment made in C.C.No.47 of 2002 on the file of the Judicial Magistrate No.VIII, Coiambatore, dated 22.10.2003.

For Petitioner :Mr.K.Kalyanasundaram
For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This revision has been preferred against the judgment in C.A.No.368/2003 on the file of the Additional District and Sessions Judge (FTC.No.I), Coimbatore, which had arisen against the judgement in C.C.No.47 of 2002 on the file the Judicial Magistrate No.VIII, Coimbatore. The accused has been charged under Section 279, 337, 338 and 304 IPC and also under Section 134(a)(b) of Motor Vehicles Act r/w 187 IPC.

2.The learned trial Judge, after taking cognizance of the offence, on appearance of the accused on summons, issued copies under Section 207 of Cr.P.C., and when the charges were explained to him and questioned, he

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pleaded not guilty. On the side of the prosecution, P.W.1 to P.W.14 were examined and Ex.P.1 to Ex.P.9 were marked.

3.P.W.1 is the complainant. According to him, the occurrence had taken place on 16.2.2002 at about 6.00 pm while he was proceeding in his motor cycle on the Coimbatore - Sathyamangalam road he saw his brother-in-law Muthukumar near Barathi nagar bus stop and he stopped his motor cycle and had conversation with this brother-in-law, at that time, his father-in-law deceased came in a by-cycle from west to east and at that time the accused was driving the ill-fated bus rashly and negligently and dashed against the by-cycle in which his father-in-law was riding and the right side front wheel of the bus ran over the by-cycle causing grievous injuries on the right side of the head and right hand and right elbow causing instantaneous death and that the bus had also hit on the scooter in which Ubayathulla and his son were travelling and both Ubayathulla and his son sustained injuries and that Ex.P.1-complaint was preferred by him. The accused was driving the private bus bearing registration No.TN.40-A 7997.

4.P.W.2 knows both the accused as well as P.W.1. According to him, when he was talking with P.W.1 on 16.2.2002 at about 6.00 pm near the place of occurrence, the accused had driven the private bus bearing registration No.TN-40-A 7997 rashly and negligently and dashed against the by-cycle in which his father was riding resulting his instantaneous death and that the bus has also hit on the scooter which was proceeding in the opposite direction causing injuries on the rider of the scooter as well as the pillion rider and that the injured were removed to the hospital.

5.P.W.3 is the Motor Vehicle Inspector, who had inspected the ill-fated bus and issued Ex.P.2-certificate stating that the accident had not occurred due to any mechanical defect of the bus.

6.P.W.4 is also an eye witness, who would corroborate the evidence of P.W.1 & P.W.2 to the effect that the accident had occurred only due to the rash and negligent driving of the driver of the bus.

7.P.W.5 has also corroborated the evidence of P.W.1, P.W.2 and P.W.4.

8.P.W.6 is a scooterist, who was also hit by the ill-fated bus at the time of the accident. He has also corroborated the evidence of P.W.1, P.W.2, P.W.4 & P.W.5.

9.P.W.7 is the son of P.W.6, a minor and a pillion rider of the scooter, which involved in the accident.

10.P.W.12 is the Sub-Inspector of Police, who had registered the case under Cr.No.90 of 2002 under Section 279, 337, 304(A) IPC. Ex.P.7 is the copy of the FIR.

11.P.W.14 is the Investigating Officer, who on the basis of

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Ex.P.1-complaint had visited to the place of occurrence and prepared observation mahazar-Ex.P.3 in the presence of P.W.18. He had also drawn the rough sketch-Ex.P.8. He has conducted inquest on the corpse of the deceased and Ex.P.9 is the inquest report. He has examined the witnesses and recorded their statements. P.w.14 has sent the corpse of the deceased for post-mortem through post-mortem constable P.W.13.

12.P.W.11 is the doctor, who had conducted autopsy on the corpse of the deceased and issued Ex.P.6-post mortem report. The doctor has opined that due to the injuries on the skull and due to hemorrhage the deceased would have died.

13.After completing the formalities P.W.12 has filed the charge sheet against the accused on 16.4.2002 under Section 279, 337, 338 and 304(A) IPC and under Section 134(a)(b) of the Motor Vehicles Act r/w 187 IPC.

14.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied his complicity with the crime. After going through the oral and documentary evidence, the learned trial Judge has find the accused guilty under Section 279, 337, 338 & 304 (A) IPC and 134(a)(b) of Motor Vehicles Act r/w 187 IPC and sentenced the accused under Section 279 IPC to undergo 6 moths RI and a fine of Rs.1,000/- with default sentence, and sentenced the accused under Section 337 IPC to undergo 6 months RI and a fine of Rs.500/- with default sentence and sentenced the accused under Section 338 IPC to undergo 6 months RI and a fine of Rs.1000/- with default sentence and sentenced the accused under section 304(A) IPC to undergo one year RI and a fine of Rs.5,000/- with default sentence and sentenced the accused under Section 134(a)(b) of the Motor Vehicles Act r/w 187 IPC to pay a fine of Rs.500/- with default sentence.

15.Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal before the Additional District and Sessions Judge, FTC.No.I, in C.A.No.368 of 2003. The learned first appellate Judge after going through the evidence both oral and documentary and also after hearing both side, had concurred with the trial Court in convicting the accused under section 279, 337, 338 & 304(A) IPC and confirmed the conviction under Section 279, 337, 338 & 304(A) IPC, but modified the sentence to three months RI instead of one year RI under Section 304(A) IPC, which necessitated the accused to prefer this revision.

16.Now the point for determination in this revision is whether the conviction and sentence imposed on the accused is liable to be set aside for the reasons stated in the memorandum of revision?

17.The Point:- The eye witnesses in this case are P.W.1, P.W.2, P.W.4 to P.W.7. Out of them P.W.6 & P.W.7 are the injured eye witnesses. The learned counsel appearing for the revision petitioner relying on the evidence of P.W.2 and P.W.4 and the evidence of P.W.1 in cross-examination, would contend that the occurrence had not taken place as alleged by the prosecution and the place of occurrence itself has wrongly been stated by the prosecution witness. But P.W.1 even though in the cross-examination would depose that the road on which the accident had occurred is a the north-south road. But in the chief-examination P.W.1 has

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clearly stated that his father-in-law was riding on the by-cycle from west to east and the ill-fated bus was driven by the accused from east to west. Even in the cross-examination P.W.1 has clearly stated that the injured P.W.6 had also came in a scooter from west to east and the cyclist was also proceeding on his cycle from west to east. Even if any confusion in the direction of the road as per the evidence of P.Ws.2, 4 & 6, the evidence of the Investigating Officer-P.W.14, it is clear that the road on which the accident had taken place is running from east to west Sathyamangalam to Coimbatore. Ex.P.8 is the rough sketch prepared by P.W.4, which contains the correct location of the place of occurrence. There is absolutely no contra evidence let in by the accused to show that Ex.P.8-rough sketch is incorrect and not showing the correct directions of the place of occurrence on lie. A perusal of Ex.P.8-rough sketch will go to show that the ill-fated bus was proceeding from east to west i.e., from Sathyamangalam to Coimbatore and the scooter in which P.Ws.6 & 7 were going towards Sathyamangalam, in the opposite direction of the ill-fated bus, which was driven by the accused. The scooter is also shown on the extreme right side of the road. But the cycle in which the deceased was riding was shown below the front left wheel of the ill-fated bus. So from Ex.P.8 it is clear that since the cycle had taken a swerve to his right, the front left side wheel of the bus hit and ran over the cyclist. The injured witnesses P.Ws.6 & 7 speak to the fact that at the time of accident the accused was driving the bus very rashly and negligently. But the fact that the accident had occurred due to the contributory negligence of the cyclist cannot also be ruled out because Ex.P.8 shows the contributed negligence of the cyclist. Admittedly the accident had occurred in a national high way. But there is no explanation forthcoming on the side of the accused for hitting the scooter on which P.Ws.6 & 7 were proceeding from Coimbatore to Sathyamangalam to their extreme left side of the road. Hence, I am of the opinion that the accident had occurred not only due to the rash and negligent act of the accused but also due the contributory negligence of the cyclist and to meet the ends of justice the sentence alone can be modified to that of the period already undergone instead of one month and three months RI. Point is answered accordingly.

18. In the result, the revision is dismissed confirming the conviction passed by the First appellate Court in C.A.No.368 of 2003 on the file of the Additional District and Sessions Judge, FTC-I, Coimbatore, but the sentence alone is modified as here under. The sentence imposed on the accused by the first appellate Court under Section 279, 337, 338 & 304(A) IPC is modified to that of the period already undergone instead of one

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month and three months RI respectively. In other respects the findings of the first appellate Court will sustain.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,
1.The Additional District & Sessions Judge,
FTC-I, Coimbatore.
2.The Principal District & Sessions Judge,
Coimbatore.
3.The Judicial Magistrate No.VIII,
Coimbatore.
4.-do- The Chief Judicial Magistrate,
Coimbatore.
5.The Inspector of Police,
Trafic Investigation Branch (central)
Coimbatore.
6.The Public Prosecutor, High Court,
Madras.
+ 1 CC To Mr.K.Kalyanasundaram, Advocate SR NO.39829

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Gp/13.7

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